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Attorneys for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,¹

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,²

USA SECURITIES, LLC,³
Debtors.

Affects:

- ☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR¹
Case No. BK-S-06-10729-LBR²

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

**DECLARATION OF EDWARD M.
BURR IN SUPPORT OF OMNIBUS
OBJECTIONS TO PROOFS OF
CLAIM BASED UPON
INVESTMENT IN PRESERVE AT
GALLERIA LOAN; AND
CERTIFICATE OF SERVICE**

Date of Hearing: January 22, 2009
Time of Hearing: 9:30 a.m.

I, Edward M. Burr, hereby declare under penalty of perjury that:

1. I am a principal with Sierra Consulting Group, LLC ("Sierra"). Sierra is one
of the leading providers of restructuring advisory and litigation support services in the

¹ This bankruptcy case was closed on September 23, 2008.

² This bankruptcy case was closed on October 12, 2007.

³ This bankruptcy case was closed on December 26, 2007.

1 Southwest. Sierra is a leading national consulting firm comprised of experienced CPAs
2 and other financial professionals.

3 2. I submit this declaration on behalf of the USACM Liquidating Trust's
4 Objections to Proofs of Claim filed this date.

5 3. This Court approved the Official Committee of Unsecured Creditors of USA
6 Commercial Mortgage Company's ("Committee") appointment of Sierra as financial
7 advisers on August 11, 2006. From that date to the Effective Date of the Debtors'
8 confirmed Plan of Reorganization, I have assisted the Committee in analyzing facts
9 concerning these jointly administered bankruptcy cases. As of the Effective Date of the
10 confirmed Plan of Reorganization, Sierra has been retained by the USACM Liquidating
11 Trust to investigate and reconcile the claims against the USA Commercial Mortgage
12 Company ("USACM") estate.

13 4. I make the following declaration based upon my personal knowledge, and
14 upon the records of the Debtors described in this declaration, including Debtors' original
15 and amended schedules of liabilities and the proofs of claim described herein, as well as
16 Debtors' accounting records.

17 5. On March 12, 2007 Effective Date of the Plan, the USACM Liquidating
18 Trust succeeded to USACM's rights with respect to books and records.

19 6. Sierra has been working closely with both the Trustee for the USACM
20 Liquidating Trust and Development Specialist Inc. ("DSI"), the Trustee's financial
21 advisor, in evaluating all of the claims that were filed in the USACM estate.

22 7. **Exhibit A**, attached, lists Proofs of Claim that appear to be based, in whole
23 or in part, upon an investment in the Preserve At Galleria, LLC Loan ("Preserve At
24 Galleria Loan"). For each claim listed, **Exhibit A** identifies the Proof of Claim number,
25 the claimant, the claimant's address, the total amount of the claim, the total amount of the
26

1 claim that appears to be related to the Preserve At Galleria Loan based upon the
2 information provided by the claimant.

3 8. On June 15, 2006, Mesirow Financial Interim Management, LLC filed the
4 original schedules and statements; according to schedule F-1 of the original schedules and
5 statements several Direct Lenders in the Preserve At Galleria were owed money for
6 unremitted principal. Based on the original schedule F-1, Mesirow created proofs of
7 claims with amounts for unremitted principal preprinted on them and these were mailed to
8 the affected Direct Lenders. Upon further review and reconciliation, Mesirow determined
9 there was no unremitted principal related to the Preserve At Galleria loan. Accordingly,
10 on March 7, 2007, a 2nd amendment to schedule F-1 (which supersedes the original and
11 the 1st amendment to schedule F-1) was filed which changed the scheduled amounts for
12 unremitted principal in the Preserve At Galleria loan to \$0. USACM has previously
13 informed Direct Lenders that the amounts set forth in the prior schedule F-1 have been
14 corrected and superseded by the amounts indicated in the recent investor statements.

15 9. We are advised by the loan servicer, confirmed by payment records, that on
16 or about September 27, 2006, the Preserve At Galleria Loan was paid in full, as reflected
17 in USACM's books and records. Shortly thereafter, USACM processed the payoff and
18 distributed the proceeds to the Direct Lenders on the Preserve At Galleria Loan.

19 10. The Direct Lenders were paid in full, subject to servicing fees and any other
20 charges under their respective Loan Servicing Agreements and this Court's orders,
21 including the Confirmation Order. In general, the Direct Lenders received their principal
22 and interest on the Preserve At Galleria Loan, less sums withheld for Prepaid Interest, and
23 sums known as the 2% Holdback. On the Effective Date of the Plan, the Prepaid Interest
24 was applied, a portion of the 2% Holdback was applied to the allowed claims of the Direct
25 Lender Committee, and the balance paid to the Direct Lenders.

Dated: December 3, 2008

Edward M. Burr

LEWIS
AND
ROCA
LLP
LAWYERS

Copy of the foregoing mailed by first class
Postage prepaid U.S. Mail on
December 3, 2008 to:

All parties in interest listed on
Exhibit A attached.

s/ Renee L. Creswell
Renee L. Creswell